

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIRST LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 1080**

Introduced by Cornett, 45.

Read first time January 21, 2010

Committee: Revenue

A BILL

1 FOR AN ACT relating to the Nebraska Advantage Act; to amend  
2 sections 77-5715 and 77-5725, Reissue Revised Statutes  
3 of Nebraska; to provide tax incentives for wind energy  
4 projects; to harmonize provisions; and to repeal the  
5 original sections.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 77-5715, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           77-5715 (1) For a tier 2, tier 3, tier 4, or tier 5  
4 project, qualified business means any business engaged in:

5           (a) The conducting of research, development, or testing  
6 for scientific, agricultural, animal husbandry, food product, or  
7 industrial purposes;

8           (b) The performance of data processing,  
9 telecommunication, insurance, or financial services. For purposes  
10 of this subdivision, financial services includes only financial  
11 services provided by any financial institution subject to tax  
12 under Chapter 77, article 38, or any person or entity licensed by  
13 the Department of Banking and Finance or the federal Securities  
14 and Exchange Commission and telecommunication services includes  
15 community antenna television service, Internet access, satellite  
16 ground station, data center, call center, or telemarketing;

17           (c) The assembly, fabrication, manufacture, or processing  
18 of tangible personal property;

19           (d) The administrative management of the taxpayer's  
20 activities, including headquarter facilities relating to such  
21 activities or the administrative management of any of the  
22 activities of any business entity or entities in which the taxpayer  
23 or a group of its shareholders holds any direct or indirect  
24 ownership interest of at least ten percent, including headquarter  
25 facilities relating to such activities;

1           (e)     The     storage,     warehousing,     distribution,  
2     transportation, or sale of tangible personal property;

3           (f)     The     sale     of     tangible     personal     property     if     the  
4     taxpayer derives at least seventy-five percent or more of the  
5     sales or revenue attributable to such activities relating to the  
6     project from sales to consumers who are not related persons and are  
7     located outside the state;

8           (g)     The     sale     of     software     development     services,     computer  
9     systems design, product testing services, or guidance or  
10    surveillance systems design services or the licensing of technology  
11    if the taxpayer derives at least seventy-five percent of the sales  
12    or revenue attributable to such activities relating to the project  
13    from sales or licensing either to customers who are not related  
14    persons and located outside the state or to the United States  
15    Government;

16          (h)     The     research,     development,     and     maintenance     of     an  
17    Internet web portal. For purposes of this subdivision, Internet web  
18    portal means an Internet site that allows users to access, search,  
19    and navigate the Internet; or

20          (i)     Any     combination     of     the     activities     listed     in     this  
21    subsection.

22          (2)     For     a     tier     1     project,     qualified     business     means     any  
23    business engaged in:

24          (a)     The     conducting     of     research,     development,     or     testing  
25    for scientific, agricultural, animal husbandry, food product, or

1 industrial purposes;

2 (b) The assembly, fabrication, manufacture, or processing  
3 of tangible personal property;

4 (c) The sale of software development services, computer  
5 systems design, product testing services, or guidance or  
6 surveillance systems design services or the licensing of technology  
7 if the taxpayer derives at least seventy-five percent of the sales  
8 or revenue attributable to such activities relating to the project  
9 from sales or licensing either to customers who are not related  
10 persons and are located outside the state or to the United States  
11 Government; or

12 (d) Any combination of activities listed in this  
13 subsection.

14 (3) For a tier 6 project, qualified business means any  
15 business except a business excluded by subsection ~~(4)~~ (5) of this  
16 section.

17 (4) For a tier 7 project, qualified business means any  
18 business engaged in the production of electricity by means of using  
19 one or more wind energy turbines to produce electricity for sale.

20 ~~(4)~~ (5) Except for business activity described in  
21 subdivision (1)(f) of this section, qualified business does not  
22 include any business activity in which eighty percent or more  
23 of the total sales are sales to the ultimate consumer of (a)  
24 food prepared for immediate consumption or (b) tangible personal  
25 property which is not assembled, fabricated, manufactured, or

1 processed by the taxpayer or used by the purchaser in any of the  
2 activities listed in subsection (1) or (2) of this section.

3 Sec. 2. Section 77-5725, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

5 77-5725 (1) Applicants may qualify for benefits under the  
6 Nebraska Advantage Act in one of ~~six~~ seven tiers:

7 (a) Tier 1, investment in qualified property of at least  
8 one million dollars and the hiring of at least ten new employees.  
9 There shall be no new project applications for benefits under this  
10 tier filed after December 31, 2015, without further authorization  
11 of the Legislature. All complete project applications filed on  
12 or before December 31, 2015, shall be considered by the Tax  
13 Commissioner and approved if the project and taxpayer qualify  
14 for benefits. Agreements may be executed with regard to completed  
15 project applications filed on or before December 31, 2015. All  
16 project agreements pending, approved, or entered into before such  
17 date shall continue in full force and effect;

18 (b) Tier 2, investment in qualified property of at least  
19 three million dollars and the hiring of at least thirty new  
20 employees;

21 (c) Tier 3, the hiring of at least thirty new employees.  
22 There shall be no new project applications for benefits under this  
23 tier filed after December 31, 2015, without further authorization  
24 of the Legislature. All complete project applications filed on  
25 or before December 31, 2015, shall be considered by the Tax

1 Commissioner and approved if the project and taxpayer qualify  
2 for benefits. Agreements may be executed with regard to completed  
3 project applications filed on or before December 31, 2015. All  
4 project agreements pending, approved, or entered into before such  
5 date shall continue in full force and effect;

6 (d) Tier 4, investment in qualified property of at least  
7 ten million dollars and the hiring of at least one hundred new  
8 employees;

9 (e) Tier 5, investment in qualified property of at least  
10 thirty million dollars. Failure to maintain an average number of  
11 equivalent employees as defined in section 77-5727 greater than or  
12 equal to the number of equivalent employees in the base year shall  
13 result in a partial recapture of benefits; and

14 (f) Tier 6, investment in qualified property of at least  
15 ten million dollars and the hiring of at least seventy-five new  
16 employees or the investment in qualified property of at least  
17 one hundred million dollars and the hiring of at least fifty new  
18 employees. Agreements may be executed with regard to completed  
19 project applications filed before January 1, 2016. All project  
20 agreements pending, approved, or entered into before such date  
21 shall continue in full force and effect; ~~and~~.

22 (g) Tier 7, investment in qualified property of at least  
23 XXX million dollars.

24 (2) When the taxpayer has met the required levels of  
25 employment and investment contained in the agreement for a tier 1,

1 tier 2, tier 4, tier 5, or tier 6 project, the taxpayer shall be  
2 entitled to the following incentives:

3 (a) A refund of all sales and use taxes for a tier 2,  
4 tier 4, tier 5, or tier 6 project or a refund of one-half of all  
5 sales and use taxes for a tier 1 project paid under the Local  
6 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections  
7 13-319, 13-324, and 13-2813 from the date of the application  
8 through the meeting of the required levels of employment and  
9 investment for all purchases, including rentals, of:

10 (i) Qualified property used as a part of the project;

11 (ii) Property, excluding motor vehicles, based in this  
12 state and used in both this state and another state in connection  
13 with the project except when any such property is to be used for  
14 fundraising for or for the transportation of an elected official;

15 (iii) Tangible personal property by the owner of the  
16 improvement to real estate that is incorporated into real estate as  
17 a part of a project; and

18 (iv) Tangible personal property by a contractor or  
19 repairperson after appointment as a purchasing agent of the owner  
20 of the improvement to real estate. The refund shall be based on  
21 fifty percent of the contract price, excluding any land, as the  
22 cost of materials subject to the sales and use tax; and

23 (b) A refund of all sales and use taxes for a tier 2,  
24 tier 4, tier 5, or tier 6 project or a refund of one-half of all  
25 sales and use taxes for a tier 1 project paid under the Local

1 Option Revenue Act, the Nebraska Revenue Act of 1967, and sections  
2 13-319, 13-324, and 13-2813 on the types of purchases, including  
3 rentals, listed in subdivision (a) of this subsection for such  
4 taxes paid during each year of the entitlement period in which  
5 the taxpayer is at or above the required levels of employment and  
6 investment.

7 (3) Any taxpayer who qualifies for a tier 1, tier 2,  
8 tier 3, or tier 4 project shall be entitled to a credit equal to  
9 three percent times the average wage of new employees times the  
10 number of new employees if the average wage of the new employees  
11 equals at least sixty percent of the Nebraska average annual wage  
12 for the year of application. The credit shall equal four percent  
13 times the average wage of new employees times the number of new  
14 employees if the average wage of the new employees equals at least  
15 seventy-five percent of the Nebraska average annual wage for the  
16 year of application. The credit shall equal five percent times the  
17 average wage of new employees times the number of new employees  
18 if the average wage of the new employees equals at least one  
19 hundred percent of the Nebraska average annual wage for the year of  
20 application. The credit shall equal six percent times the average  
21 wage of new employees times the number of new employees if the  
22 average wage of the new employees equals at least one hundred  
23 twenty-five percent of the Nebraska average annual wage for the  
24 year of application. For computation of such credit:

25 (a) Average annual wage means the total compensation paid

1 to employees during the year at the project who are not base-year  
2 employees and who are paid wages equal to at least sixty percent  
3 of the Nebraska average weekly wage for the year of application,  
4 excluding any compensation in excess of one million dollars paid  
5 to any one employee during the year, divided by the number of  
6 equivalent employees making up such total compensation;

7 (b) Average wage of new employees means the average  
8 annual wage paid to employees during the year at the project who  
9 are not base-year employees and who are paid wages equal to at  
10 least sixty percent of the Nebraska average weekly wage for the  
11 year of application, excluding any compensation in excess of one  
12 million dollars paid to any one employee during the year; and

13 (c) Nebraska average annual wage means the Nebraska  
14 average weekly wage times fifty-two.

15 (4) Any taxpayer who qualifies for a tier 6 project shall  
16 be entitled to a credit equal to ten percent times the total  
17 compensation paid to all employees, other than base-year employees,  
18 excluding any compensation in excess of one million dollars paid to  
19 any one employee during the year, employed at the project.

20 (5) Any taxpayer who has met the required levels of  
21 employment and investment for a tier 2 or tier 4 project shall  
22 receive a credit equal to ten percent of the investment made in  
23 qualified property at the project. Any taxpayer who has met the  
24 required levels of investment and employment for a tier 1 project  
25 shall receive a credit equal to three percent of the investment

1 made in qualified property at the project. Any taxpayer who has  
2 met the required levels of investment and employment for a tier  
3 6 project shall receive a credit equal to fifteen percent of the  
4 investment made in qualified property at the project.

5 (6) The credits prescribed in subsections (3), (4), and  
6 (5) of this section shall be allowable for compensation paid and  
7 investments made during each year of the entitlement period that  
8 the taxpayer is at or above the required levels of employment and  
9 investment.

10 (7) The credit prescribed in subsection (5) of this  
11 section shall also be allowable during the first year of the  
12 entitlement period for investment in qualified property at the  
13 project after the date of the application and before the required  
14 levels of employment and investment were met.

15 (8)(a) A taxpayer who has met the required levels of  
16 employment and investment for a tier 4 or tier 6 project shall  
17 receive the incentive provided in this subsection. A taxpayer who  
18 has a project for an Internet web portal and who has met the  
19 required level of investment for a tier 5 project shall receive the  
20 incentive provided in this subsection for property in subdivision  
21 (8)(b)(ii) of this section. Such investment and hiring of new  
22 employees shall be considered a required level of investment and  
23 employment for this subsection and for the recapture of benefits  
24 under this subsection only.

25 (b) The following property used in connection with such

1 project or projects and acquired by the taxpayer, whether by  
2 lease or purchase, after the date the application was filed shall  
3 constitute separate classes of personal property:

4 (i) Turbine-powered aircraft, including turboprop,  
5 turbojet, and turbofan aircraft, except when any such aircraft is  
6 used for fundraising for or for the transportation of an elected  
7 official;

8 (ii) Computer systems, made up of equipment that is  
9 interconnected in order to enable the acquisition, storage,  
10 manipulation, management, movement, control, display, transmission,  
11 or reception of data involving computer software and hardware, used  
12 for business information processing which require environmental  
13 controls of temperature and power and which are capable of  
14 simultaneously supporting more than one transaction and more than  
15 one user. A computer system includes peripheral components which  
16 require environmental controls of temperature and power connected  
17 to such computer systems. Peripheral components shall be limited to  
18 additional memory units, tape drives, disk drives, power supplies,  
19 cooling units, data switches, and communication controllers;

20 (iii) Depreciable personal property used for a  
21 distribution facility, including, but not limited to, storage  
22 racks, conveyor mechanisms, forklifts, and other property used to  
23 store or move products;

24 (iv) Personal property which is business equipment  
25 located in a single project if the business equipment is involved

1 directly in the manufacture or processing of agricultural products;  
2 and

3 (v) For a tier 6 project, any other personal property  
4 located at the project.

5 (c) Such property shall be eligible for exemption from  
6 the tax on personal property from the first January 1 following  
7 the date of acquisition for property in subdivision (8)(b)(i)  
8 of this section, or from the first January 1 following the end  
9 of the year during which the required levels were exceeded for  
10 property in subdivisions (8)(b)(ii), (iii), (iv), and (v) of this  
11 section, through the ninth December 31 after the first year any  
12 property included in subdivisions (8)(b)(ii), (iii), (iv), and (v)  
13 of this section qualifies for the exemption. In order to receive  
14 the property tax exemptions allowed by subdivision (8)(b) of this  
15 section, the taxpayer shall annually file a claim for exemption  
16 with the Tax Commissioner on or before May 1. The form and  
17 supporting schedules shall be prescribed by the Tax Commissioner  
18 and shall list all property for which exemption is being sought  
19 under this section. A separate claim for exemption must be filed  
20 for each project and each county in which property is claimed  
21 to be exempt. A copy of this form must also be filed with the  
22 county assessor in each county in which the applicant is requesting  
23 exemption. The Tax Commissioner shall determine the eligibility  
24 of each item listed for exemption and, on or before August 1,  
25 certify such to the taxpayer and to the affected county assessor.

1 In determining the eligibility of items of personal property for  
2 exemption, the Tax Commissioner is limited to the question of  
3 whether the property claimed as exempt by the taxpayer falls  
4 within the classes of property described in subdivision (8)(b) of  
5 this section. The determination of whether a taxpayer is eligible  
6 to obtain exemption for personal property based on meeting the  
7 required levels of investment and employment is the responsibility  
8 of the Tax Commissioner.

9 (9)(a) A taxpayer who has met the required level of  
10 investment for a tier 7 project shall receive the incentive  
11 provided in this subsection. Such investment shall be considered  
12 a required level of investment for this subsection and for the  
13 recapture of benefits under this subsection only.

14 (b) The following property used in connection with such  
15 project or projects and acquired by the taxpayer, whether by  
16 lease or purchase, after the date the application was filed shall  
17 constitute separate classes of personal property:

18 (i) Any depreciable tangible personal property; and

19 (ii) One or more turbine-powered generators used to  
20 produce electricity from wind energy.

21 (c) Such property shall be eligible for exemption from  
22 the tax on personal property from the first January 1 following  
23 the date of acquisition for property in subdivision (9)(b) of  
24 this section. In order to receive the property tax exemptions  
25 allowed by subdivision (9)(b) of this section, the taxpayer shall

1 annually file a claim for exemption with the Tax Commissioner  
2 on or before May 1. The form and supporting schedules shall be  
3 prescribed by the Tax Commissioner and shall list all property  
4 for which exemption is being sought under this section. A separate  
5 claim for exemption must be filed for each project and each county  
6 in which property is claimed to be exempt. A copy of this form  
7 must also be filed with the county assessor in each county in  
8 which the applicant is requesting exemption. The Tax Commissioner  
9 shall determine the eligibility of each item listed for exemption  
10 and, on or before August 1, certify such to the taxpayer and to  
11 the affected county assessor. In determining the eligibility of  
12 items of personal property for exemption, the Tax Commissioner is  
13 limited to the question of whether the property claimed as exempt  
14 by the taxpayer falls within the classes of property described in  
15 subdivision (9)(b) of this section. The determination of whether  
16 a taxpayer is eligible to obtain exemption for personal property  
17 based on meeting the required levels of investment and employment  
18 is the responsibility of the Tax Commissioner.

19 ~~(9)(a)~~ (10)(a) The investment thresholds in this section  
20 for a particular year of application shall be adjusted by the  
21 method provided in this subsection.

22 (b) For tier 1, tier 2, tier 4, and tier 5, beginning  
23 October 1, 2006, and each October 1 thereafter, the average  
24 Producer Price Index for all commodities, published by the United  
25 States Department of Labor, Bureau of Labor Statistics, for the

1 most recent twelve available periods shall be divided by the  
2 Producer Price Index for the first quarter of 2006 and the result  
3 multiplied by the applicable investment threshold. The investment  
4 thresholds shall be adjusted for cumulative inflation since 2006.

5 (c) For tier 6, beginning October 1, 2008, and each  
6 October 1 thereafter, the average Producer Price Index for all  
7 commodities, published by the United States Department of Labor,  
8 Bureau of Labor Statistics, for the most recent twelve available  
9 periods shall be divided by the Producer Price Index for the  
10 first quarter of 2008 and the result multiplied by the applicable  
11 investment threshold. The investment thresholds shall be adjusted  
12 for cumulative inflation since 2008.

13 (d) For tier 7, beginning October 1, 2010, and each  
14 October 1 thereafter, the average Producer Price Index for all  
15 commodities, published by the United States Department of Labor,  
16 Bureau of Labor Statistics, for the most recent twelve available  
17 periods shall be divided by the Producer Price Index for the  
18 first quarter of 2010 and the result multiplied by the applicable  
19 investment threshold. The investment thresholds shall be adjusted  
20 for cumulative inflation since 2010.

21 ~~(d)~~ (e) If the resulting amount is not a multiple of one  
22 million dollars, the amount shall be rounded to the next lowest one  
23 million dollars.

24 ~~(e)~~ (f) The investment thresholds established by this  
25 subsection apply for purposes of project qualifications for all

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1 applications filed on or after January 1 of the following year  
2 for all years of the project. Adjustments do not apply to projects  
3 after the year of application.

4           Sec. 3. Original sections 77-5715 and 77-5725, Reissue  
5 Revised Statutes of Nebraska, are repealed.